

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

Halperin

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**FILE:** B-213046.4

**DATE:** May 22, 1984

**MATTER OF:** Carl Goldberg Models, Inc.

**DIGEST:**

1. GAO does not review affirmative determinations of responsibility unless there is a showing of possible fraud on the part of the contracting officials or an allegation that definitive responsibility criteria have been misapplied.
2. Protests based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of proposals must be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1983).
3. Solicitation requirements are not objectionable merely because they might be more easily met by an incumbent contractor than by other offerors; a competitive advantage gained by virtue of a firm's incumbency is not an unfair advantage which must be eliminated.

Carl Goldberg Models, Inc. (Goldberg), protests the award of a contract to R. S. Systems under request for proposals (RFP) No. DAAH01-83-R-0244 issued by the United States Army Missile Command, Redstone Arsenal, Alabama, for an estimated quantity of radio controlled miniature aerial targets (RCMAT). Goldberg alleges that the awardee will be unable to perform the contract. In addition, Goldberg contends that the specifications are inadequate and tend to give the awardee, a contractor on a prior RCMAT procurement, a competitive advantage.

We dismiss the protest.

Goldberg alleges that R. S. Systems' RCMAT "has been in use for a few years with serious short-comings in design and quality." Goldberg argues:

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" . . . that since R. S. Systems (the current supplier) has demonstrated an inability to design and manufacture a functional RCMAT under a current government contract, it should not be found capable and responsive to the needs of a new RCMAT government contract."

Whether a bidder is capable of performing contract requirements is a matter of responsibility; before award, a contracting officer must make an affirmative determination of the proposed awardee's responsibility. Our Office does not review protests concerning such determinations unless there is a showing of possible fraud on the part of the contracting officials or an allegation that definitive responsibility criteria have been misapplied. Medi Coach, Inc., B-214034, May 2, 1984, 84-1 CPD \_\_\_\_.

Goldberg alleges that the RFP was inadequate in a number of ways. In addition, Goldberg contends that the specification inadequacies gave R. S. Systems, an incumbent aware of past contract requirements, an unfair competitive advantage.

Our Bid Protest Procedures require that protests based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of proposals must be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1983). Since Goldberg's protest was filed after award was made, its allegations concerning solicitation improprieties are untimely and will not be considered on the merits. Canadian Commercial Corporation, B-212895.2, January 30, 1984, 84-1 CPD 129. Moreover, solicitation requirements are not objectionable merely because they might be more easily met by an incumbent contractor than by other offerors; a competitive advantage gained by virtue of a firm's incumbency is not an unfair advantage which must be eliminated. Romar Consultants, Inc., B-206489, October 15, 1982, 82-2 CPD 339.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel

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